

Decision No. 23658

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
NAPA VALLEY BUS COMPANY to distribute)
and transfer, in the process of winding)
up its affairs and effecting its volun-)
tary dissolution, all of its assets to)
SAN FRANCISCO AND NAPA VALLEY RAILROAD,)
and of the latter to assume and agree to)
pay the debts and to perform all other)
obligations of said Napa Valley Bus)
Company.)

Application
No. 23658

BY THE COMMISSION:

ORIGINAL

O P I N I O N

By this joint application Napa Valley Bus Company, hereinafter referred to as the Bus Company, and San Francisco and Napa Valley Railroad, hereinafter referred to as the Railroad Company, both corporations, seek an order of this Commission approving the transfer from the former to the latter of all the Bus Company's assets and properties, including certificates of public convenience and necessity for the transportation of passengers, baggage and express between Vallejo and Calistoga and intermediate points, and between San Francisco, on the one hand, and Vallejo, on the other hand, as well as certain equipment. (1)

According to the application, the Bus Company is in the process of voluntary dissolution with the consent of American

(1) The equipment consists of one bus (out of service) and garage equipment. Service is now performed by equipment leased from the Railroad Company, but which is not involved in this proceeding.

Trust Company which, as trustee, under applicant Railroad Company's Trust Indenture dated January 1, 1936, holds all outstanding shares of the capital stock of the Bus Company. The Bus Company proposes to withdraw entirely from the field of public transportation if the instant authority is granted and the Railroad Company proposes to take over and operate this service and will further assume and pay the debts ⁽²⁾ and obligations of and release all its claims against the Bus Company, pursuant to terms of an agreement, a copy of which is attached to the application here pending, to be entered into upon the granting of the authority to transfer herein sought. In addition, applicants ask that the Railroad Company be authorized to execute and deliver to American Trust Company, as trustee, a supplemental indenture to said trustee, conveying title to the motor bus above referred to, said indenture to be substantially as set forth in the form of indenture attached to the application.

The operative rights proposed to be transferred were created by Decisions Nos. 18217 and 18750, on Application No. 12359; Decisions Nos. 24791, 30119 and 31131, on Application No. 20805.

This appears to be a matter in which a public hearing is not necessary. The application will be granted.

San Francisco and Napa Valley Railroad is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly

(2) All debts of the Bus Company, with the exception of taxes, are payable to the Railroad Company.

of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

IT IS ORDERED that Napa Valley Bus Company is hereby authorized to transfer to San Francisco and Napa Valley Railroad and San Francisco and Napa Valley Railroad is hereby authorized to acquire the operative rights and physical property referred to in the foregoing opinion in accordance with the terms of the agreement attached to the application herein, and hereafter to operate thereunder, provided that a properly executed and certified copy of said agreement is filed with the Commission within thirty (30) days from the effective date of this order.

IT IS FURTHER ORDERED that San Francisco and Napa Valley Railroad be, and it hereby is, authorized to execute and deliver to American Trust Company, as trustee, a supplemental indenture substantially in the form of the document attached to the application herein, conveying to said trustee title to the motor vehicle referred to in the foregoing opinion. A certified copy of this supplemental indenture shall likewise be filed with the Commission within thirty (30) days from the effective date of this order.

The authority herein granted is subject to the following conditions:

1. The authority herein granted shall lapse and be void if applicant shall not have complied with all the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
2. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.
3. Applicant Napa Valley Bus Company shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, unite with applicant San Francisco and Napa Valley Railroad in common supplement to the tariffs on file with the Commission covering the service given under the operative rights herein authorized to be transferred, applicant Napa Valley Bus Company withdrawing, and applicant San Francisco and Napa Valley Railroad accepting and establishing such tariffs and all effective supplements thereto.
4. Applicant Napa Valley Bus Company shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, withdraw all time schedules filed in its name with the Railroad Commission and applicant San Francisco and Napa Valley Railroad shall within thirty (30) days after the effective date of the order herein, and upon not less than five (5) days' notice to the Commission and the public, file in triplicate, in its own name time schedules covering service heretofore given by applicant Napa Valley Bus Company, which time schedules shall be satisfactory to the Railroad Commission.
5. The rights and privileges herein authorized may not be sold, leased, transferred, nor assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.
6. The authority herein granted to execute a supplement indenture is for the purpose of this proceeding only, and is granted only in so far as this Commission has jurisdiction under the Public Utilities Act and is not intended as an approval of said indenture as to such other legal requirements to which it may be subject.
7. No vehicle may be operated by applicant San Francisco and Napa Valley Railroad unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

8. Applicant shall, prior to the commencement of service authorized herein and continuously thereafter, comply with all the provisions of this Commission's General Order No. 91.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this five day of October, 1940.

Ray L. Riley
Joseph D. Miller
Robert J. [unclear]
[unclear]
Justin J. Coe
COMMISSIONERS